

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE COLUMBIA UNIVERSITY PATENT  
LITIGATION

No. 04-MDL-01592

This Document Relates To All Actions.

**UNOPPOSED MOTION FOR LEAVE TO FILE SUPPLEMENTAL  
MEMORANDUM OF LAW REGARDING A NEW CASE RESPONSIVE TO THE  
COURT'S OCTOBER 4, 2004 ORDER**

Pursuant to Local Rule 7.1(B)(3), Plaintiffs Biogen Idec MA, Inc. and Genzyme Corporation hereby move for leave of the Court to file a Supplemental Memorandum of Law Regarding a New Case Responsive to the Court's October 4, 2004 Order. The proposed Supplemental Memorandum is attached hereto as Exhibit 1. As grounds for this Motion, Plaintiffs state that a recent Federal Circuit decision in *Capo, Inc. v. Dioptics Medical Products, Inc.*, No. 04-1045 (Fed. Cir. Oct. 25, 2004), is responsive to the Court's October 4, 2004 Order requesting that the parties inform the Court of additional caselaw regarding whether a court has discretion to decline to hear declaratory judgment claims. In *Capo*, the Federal Circuit held that a district court abused its discretion when it dismissed a declaratory judgment action.

In addition, Columbia does not oppose the filing of this Supplemental Memorandum.

Dated: November 2, 2004

Respectfully submitted,

/s/ Donald R. Ware

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**Certification of Counsel**

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for Plaintiffs conferred with each other party and that no party opposes this motion.

/s/ Donald R. Ware

Donald R. Ware